

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ARTHUR USHERSON,

Plaintiff,

v.

BANDSHELL ARTIST MANAGEMENT,

Defendant.

Docket No. 1:19-cv-6368 (JMF)

**DECLARATION OF MARK J. MCKENNA IN SUPPORT OF DEFENDANT'S MOTION
FOR SECURITY FOR COSTS AND FEES**

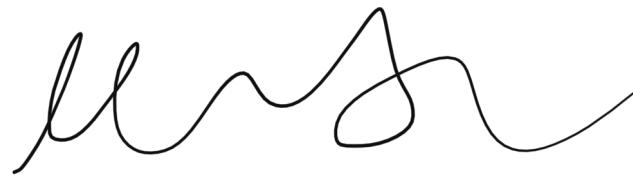
I, Mark J. McKenna, declare:

1. I am the owner and sole employee of Defendant Bandshell Artist Management.
2. Bandshell represents a few musicians who have been around a very long time, such as David Bromberg. As part of that representation, we administer the personal informational Facebook page of the David Bromberg Quintet & Band, giving information about Mr. Bromberg.
3. David Bromberg does not have a separate personal Facebook page to my knowledge.
4. Bandshell is not paid separately for administering the Facebook Page.
5. Mr. Bromberg had been good friends with another musician, Leon Redbone, for decades.
6. Mr. Redbone passed away in May of 2019, and Bandshell placed a heartfelt Rest in Peace message to Mr. Redbone on the David Bromberg Quintet & Band Facebook Page using a cropped version of Mr. Redbone's Facebook profile cover photograph. The

memorial post included the message “a clarinet solo please, in honor of Leon Redbone who departed today for that celestial shore . . .”

7. The image taken from Mr. Redbone’s Facebook profile page was a photograph of Bob Dylan, Leon Redbone, and David Bromberg together at the Mariposa Folk Festival in 1972 (the “Photograph”).
8. When I found the Photograph on Mr. Redbone’s Facebook page, it did not contain any notice of or reference to Plaintiff’s or anyone else’s supposed copyrights whatsoever.
9. In July of 2019, Plaintiff’s counsel contacted me and informed me his client, Arthur Usherson, was suing me for infringing on his copyright in the Photograph.
10. Plaintiff’s counsel demanded a large sum of money to settle the alleged infringement claim, which Bandshell could not pay and could not believe could be justified based on the Facebook post.
11. On September 5, 2019, I was formally served in this suit. I subsequently retained *pro bono* counsel.
12. Bandshell has never profited off of the Photograph or sold it in any way. The Photograph has not been used in connection with the sale of any goods or services.
13. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: November 26, 2019

A handwritten signature in black ink, appearing to read "Mark J. McKenna", is written over a horizontal line. The signature is fluid and cursive, with a prominent 'M' at the beginning.

Mark J. McKenna

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Declaration of Mark J. McKenna with the Clerk of the Court using the CM/ECF system on this 27th day of November, 2019, which constitutes service on Plaintiff, a registered user of the CM/ECF system pursuant to Fed. R. Civ. P. 5(b)(2)(E).

Dated: November 27, 2019

/s/ Brad R. Newberg
Brad R. Newberg (#BN1203)
McGuireWoods LLP
1750 Tysons Blvd.
Tysons Corner, VA 22102
T: 703-712-5061
F: 703-712-5050
bnewberg@mcguirewoods.com

Attorney for Defendant Bandshell Artist Management